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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

JODI BRUNKER, on behalf of herself and all similarly situated individuals, Plaintiff, vs. SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT, Defendant.	Case No. 16-3399 HDL **DEFENDANT SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT'S ANSWER TO COMPLAINT FOR VIOLATIONS OF THE FAIR LABOR STANDARDS ACT**

Defendant, SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT (“BART”), answers Plaintiffs' Complaint as follows:

INTRODUCTION

1. Responding to the allegations of Paragraph 1, BART admits that this Court has jurisdiction over actions brought pursuant to the Federal Fair Labor Standards Act (FLSA); BART lacks sufficient information or belief to enable it to respond to the remaining allegations of Paragraph 1 and on that ground denies them.

2. BART denies the allegations of Paragraph 2.

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THE PARTIES

3. BART admits that Plaintiff Jodi Brunker is, or was, employed by BART; BART denies the remaining allegations of Paragraph 3.

4. BART denies the allegations of Paragraph 4.

5. BART admits the allegations of Paragraph 5 with respect to Plaintiff Jodi Brunker. BART lacks sufficient information or belief to enable it to respond to the remaining allegations in Paragraph 5 with respect to any other Plaintiffs, and on that ground denies them.

6. BART lacks sufficient information or belief to enable it to respond to the allegations of Paragraphs 6 and 7 and, on that ground, denies them.

JURISDICTION

7. Answering the allegations of Paragraph 8, BART admits that this Court has jurisdiction over actions brought pursuant to the Federal Fair Labor Standards Act (FLSA); BART lacks sufficient information or belief to enable it to respond to the remaining allegations of Paragraph 8 and, on that ground, denies them.

COLLECTIVE ACTION ALLEGATIONS

8. Answering the allegations of Paragraph 9, BART specifically denies that any employees were denied overtime compensation. BART lacks sufficient information or belief to enable it to respond to the remaining allegations of Paragraph 9 and, on that ground, denies them.

9. Answering the allegations of Paragraph 10, BART admits that the provisions of 29 USC Section 216 provide for a collective action and damages, BART denies that Plaintiffs are entitled to the damages enumerated therein. BART lacks sufficient information or belief to enable it to respond to the remaining allegations of Paragraph 10 and, on that ground, denies them.

10. BART lacks sufficient information or belief to enable it to respond to the allegations of Paragraphs 11, 12, 13, 14, 15, 16, 17 and 18 and, on that ground, denies them.

FACTUAL ASSERTIONS

11. Answering the allegations of Paragraph 19, BART admits that the Plaintiff Jodi Brunker named herein is, or was, an employee of BART. BART lacks sufficient information or

belief to enable it to respond to the remaining allegations in Paragraph 19 with respect to any other Plaintiffs, and on that ground denies them.

12. Answering the allegations of Paragraph 20, BART admits that certain of its employees have been permitted to work hours beyond the statutory threshold for overtime compensations as specified by the FLSA. BART lacks sufficient information or belief to enable it to respond to the remaining allegations of Paragraph 20 and, on that ground, denies them.

13. BART denies the allegations of Paragraph 21.

14. Answering the allegations of Paragraph 22, BART avers that the provisions of 29 USC Section 207(c) speak for themselves.

15. BART denies the allegations of Paragraph 23.

16. Answering the allegations of Paragraph 24, BART denies that if failed to include any wages paid to employees in its calculation of overtime wages and alleges that the medical "in lieu of" payment, does not constitute compensation which increases an employee's regular rate of pay. BART lacks sufficient information or belief to enable it to respond to the remaining allegations of Paragraph 24 and, on that ground, denies them.

17. Answering the allegations of Paragraph 25, BART admits that employees who opt-out of BART paid medical coverage may, under certain conditions, receive a payment "in lieu of" such coverage. BART denies that such payment constitutes compensation.

18. Answering the allegations of Paragraph 26, BART admits that for a period of time it did not calculate the value of the medical "in lieu of" benefit in the base pay used to calculate overtime. BART expressly denies that such calculations are required.

19. BART admits the allegations of Paragraphs 27 and 28.

20. Answering the allegations of Paragraph 29, BART avers that the provisions of 29 U.S.C. Section 207(e) speak for themselves.

21. Answering the allegations of Paragraph 30, 31 and 32, BART avers that the provisions of 29 U.S.C. Section 207 and 29 C.F.R. Section 778.215 speak for themselves.

22. Answering the allegations of Paragraph 33, BART avers that the holding in *Flores v. City of San Gabriel* decision speaks for itself.

23. BART denies the allegations of the paragraph following Paragraph 33, numbered Paragraph 42.

24. Answering the allegations of Paragraph 34, BART admits that it has not included the "in lieu of" medical payment as part of regular pay for the purpose of calculation of FLSA overtime and denies it was required to do so. BART lacks sufficient information or belief to enable it to respond to the remaining allegations of Paragraph 34 and, on that ground, denies them.

25. Answering the allegations of Paragraph 35, BART denies that it paid compensation to its employees for medical benefits. BART lacks sufficient information or belief to enable it to respond to the remaining allegations of Paragraph 35 and, on that ground, denies them.

26. BART denies the allegations of Paragraphs 36, 37, 38 and 39.

27. Answering the allegations of Paragraphs 40 and 41, BART avers that the provisions of 29 U.S.C Section 207 speak for themselves.

28. BART denies the allegations of the second Paragraph numbered 42 and, specifically, denies that is has excluded compensation for time worked from employee's regular rate of pay used in the calculation of overtime.

29. BART denies the allegations of Paragraphs 43, 44, 45, 46 and 47.

FIRST COUNT

30. BART re-alleges and reincorporates its responses to Paragraphs 1-47 as though fully set forth herein.

31. BART denies the allegations of Paragraphs 49 and 50 and denies the allegations of those Paragraphs numbered 42, 43, 45, 46 and 47 consecutively following Paragraph 50.

FIRST AFFIRMATIVE DEFENSE

32. As for a separate and distinct affirmative defense, BART alleges that Plaintiffs' Complaint and each count therein fails to state facts sufficient to constitute a cause of action.

SECOND AFFIRMATIVE DEFENSE

33. As for a separate and distinct defense, BART alleges that Plaintiffs' claims are barred by the applicable statute of limitations.

THIRD AFFIRMATIVE DEFENSE

34. As for a separate and distinct defense, BART alleges that at all times herein material, it acted in good faith with reasonable grounds for believing it had not violated California or Federal law.

FOURTH AFFIRMATIVE DEFENSE

35. As for a separate and distinct defense, BART alleges that it had no knowledge of any, nor should it have had knowledge of any, alleged improperly compensated overtime work by any Plaintiff as set forth in the Complaint.

FIFTH AFFIRMATIVE DEFENSE

36. As for a separate and distinct defense, BART alleges that it did not authorize, require, request, suffer or permit the activities alleged by Plaintiffs in the Complaint.

SIXTH AFFIRMATIVE DEFENSE

37. As for a separate and distinct defense, BART alleges that Plaintiffs are barred from recovery herein because they failed to notify BART of the alleged statutory violations at the time such violations allegedly occurred and, as a result, BART was prevented from taking any action to remedy such alleged violations.

SEVENTH AFFIRMATIVE DEFENSE

38. As for a separate and distinct defense, BART alleges that the Complaint fails to state a claim upon which attorneys' fees may be awarded.

EIGHTH AFFIRMATIVE DEFENSE

39. As for a separate and distinct defense, BART alleges that Plaintiffs have failed to mitigate their damages.

NINTH AFFIRMATIVE DEFENSE

40. As for a separate and distinct defense, BART alleges that Plaintiffs have failed to satisfy and/or exhaust the administrative prerequisites for bringing such claim.

TENTH AFFIRMATIVE DEFENSE

41. As for a separate and distinct defense, BART alleges that Plaintiffs' claims are barred in whole or in part by the doctrine of unclean hands, waiver, and/or estoppel.

WHEREFORE, BART prays as follows:

1. That Plaintiffs take nothing by their complaint;
2. That the action be dismissed with prejudice;
3. That BART recover its costs of suit herein; and
4. Such other and proper relief as the Court deems just and proper.

DATED: August 17, 2016

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

By: *-Vicki R. Nuetzel-*

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